



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

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Applicant: Lundberg, John D.

Serial No.: 10/782,428

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Art Unit: 2854

Filed: February 18, 2004

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Examiner: Minh H. Chau (previously Charles H. Nolan)

For: "Rotary Engraving Apparatus"

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**RENEWED PETITION UNDER 37 CFR § 1.181**

**I. Procedural Background**

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Applicant originally filed the above-referenced non-provisional patent application on February 18, 2004. Applicant subsequently received a First Office Action dated November 23, 2004, and responded to said Office Action. Applicant received no other correspondence or communication from the U.S. Patent & Trademark Office ("USPTO") until Applicant received a Notice of Abandonment dated December 29, 2005. Although the subject Notice of Abandonment

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references a communication from the USPTO dated June 6, 2005<sup>1</sup>, Applicant never received such communication.

Following receipt of the Notice of Abandonment, undersigned counsel undertook an extensive search of all files related to this matter and other matters being handled on behalf of Applicant, including certain file materials in counsel's closed files storage warehouse. Following this detailed search, undersigned counsel never located any correspondence or other communication from the USPTO dated June 6, 2005 or otherwise related to this matter.

On March 13, 2006, Applicant filed a Petition to Revive Under 37 CFR §1.181 claiming non-receipt of the June 6, 2005 correspondence from the USPTO. By Decision on Petition dated September 18, 2006, Applicant's Petition was denied. Pursuant to the provisions of 37 CFR 1.136(a), a Petition for Extension of Time under 37 CFR 1.136(a) together with applicable fee are enclosed herewith. This request for reconsideration (Renewed Petition under 37 CFR § 1.181) is made on January 18, 2007 by Certificate of Mailing Procedure provided in 37 CFR §1.10, and is therefore timely.

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<sup>1</sup> Counsel for Applicant subsequently obtained a copy of the subject correspondence directly from Examiner Minh Chau in November, 2006. The June 6, 2005 correspondence at issue is a Second (Final) Office Action in connection with the captioned pending patent application.

## **Substantive Response**

### ***A. Reason for Failure to Respond***

Applicant respectfully asserts that abandonment of the subject application is improper. After filing its Response to First Office Action, Applicant never received  
5 any additional correspondence or other communication from the USPTO until receiving the Notice of Abandonment. At the time that the Notice of Abandonment was received, undersigned counsel for Applicant fully believed that the matter was in good standing and pending with the Examiner. Receipt of the Notice of Abandonment was a complete surprise to undersigned counsel and Applicant.

### ***B. Docket Records***

When undersigned counsel receives communication from the USPTO requiring a response (such as, for example, the June 6, 2005 Office Action at issue), undersigned counsel has a standard procedure. First, the communication is routed to counsel's assistant, who promptly logs in such communication.

15 Counsel's assistant stamps the communication with a date-stamp and creates a separate file folder for the communication. Counsel's assistant thereafter promptly records the appropriate response deadlines into counsel's computerized practice management and calendaring system. Counsel's assistant calendars one (1) month, (3) month and (6) month deadlines on such computerized docketing  
20 system; such deadlines continue to appear until they are specifically deleted from

the computerized system. Undersigned counsel checks such computerized calendaring system every business day for all pending deadlines.

Thereafter, counsel's assistant immediately transfers the physical file folder to a separate "in box" in counsel's office for pending communications requiring a response.

An affidavit executed by counsel's assistant, who also acted as counsel's assistant during the periods at issue, is attached hereto as **Exhibit "A"**. (Copies of print-outs from counsel's computerized docketing program for the period in question are attached to said affidavit.) An affidavit executed by undersigned counsel is also attached hereto as **Exhibit "B"**. As set forth in the affidavits attached hereto, the June 6, 2005 communication at issue was not received by undersigned counsel prior to receipt of the Notice of Abandonment, and a diligent search of counsel's docket records indicate that the subject Office Action was not received.

*C. Address*

Undersigned counsel receives mail at two addresses: (1) the law firm's physical address (600 Jefferson Street); and (2) the firm's post office drawer (P.O. Drawer 3408). Counsel's law firm has had the same physical location and post office drawer, and utilized the same addresses for U. S Mail delivery, since the late 1980's. Undersigned counsel routinely receives daily mail addressed to either

address interchangeably. Although the physical address is the address of record for this application with the USPTO, undersigned counsel inadvertently filed the original Petition using the post office drawer address. However, this was not a change of address, and would not impact counsel's receipt of the subject communication in any way. Thus, the non-receipt of the June 6, 2005 Office Action cannot be attributed to a change of address that was not communicated to the USPTO.

*D. Response*

At the time that Applicant filed its Petition to Revive Under 37 CFR §1.181 claiming non-receipt of the June 6, 2005 communication from the USPTO, counsel had never seen the subject communication. Thus, counsel did not know the nature of the subject communication or what it contained. Accordingly, a response to the June 6, 2005 communication was not submitted along with the original Petition to Revive. However, Applicant includes herewith a copy of a continuation application which is being filed in this matter. As noted in the Decision on Petition issued by the USPTO in this matter, a continuing application is a proper response to a final office action.

**III. Conclusion**

In summary, Applicant asserts that abandonment of the subject application was improper and not warranted under the circumstances. Applicant never received the correspondence that allegedly gave rise to the subject abandonment.

Applicant, through undersigned counsel, hereby avers and represents that it has never received the June 6, 2005 communication from the USPTO referenced in the attached Notice of Abandonment, or any other similar communication in this matter.

Applicant's representative, Ted M. Anthony, can be reached by telephone at (337) 262-9000 or facsimile at (337) 262-9001.

Respectfully submitted:

PERRET DOISE, APLC

Date:

*January 18, 2007*

By:

*Ted Anthony*  
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